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Supreme Court, U.S.
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No. 96-112

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

STATE OF MARYLAND,
Petitioner,

v.

BRUCE LAMONT DENNIS,
Respondent.

On Petition For Writ of Certiorari To The Court of Appeals of Maryland

REPLY TO BRIEF IN OPPOSITION

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REPLY ARGUMENT

In his brief in opposition, Dennis raises two new points not addressed in the petition for writ of certiorari. First, he argues that Maryland's petition fails to present a case or controversy and that it calls for this Court to issue an advisory opinion. (Brief in Opp. 2-4). Second, he argues that the real issue presented by this case is one of evidentiary sufficiency, not one implicating the Fourth Amendment. (Brief in Opp. 4-5). Contrary to Dennis's first assertion, an affirmative answer to the question presented in the petition would indeed change the result in this case. His second argument mischaracterizes the issue here and is belied by the Court of Appeals of Maryland's opinion itself.

I.

THE PETITION PRESENTS A CASE OR CONTROVERSY.

Dennis was convicted of disorderly conduct and battery, but those convictions were reversed because the appellate court misinterpreted the Fourth Amendment. (Pet. for Cert. App. 1a-2a). Nonetheless, Dennis argues that neither conviction will be affected by a decision by this Court on the question presented by Maryland's petition, because both convictions are controlled by interpretations of state law. Insofar as the disorderly conduct conviction is concerned, Dennis is correct. His conviction of battery, however, will be directly impacted by this Court's decision because the Maryland Court of Appeals' reversal of that conviction was based on Fourth

Amendment grounds.

Dennis relies on an incorrect premise in arguing that his battery conviction would be unaffected by this Court's holding that Officer Foskey acted lawfully in ordering him to remain in the vehicle. The tackle of Dennis by Officer Foskey, which the Court of Appeals of Maryland characterized as an unlawful arrest, (Pet. for Cert. App. 19a), flowed directly from the officer's command that Dennis remain in the vehicle. The subsequent commands to stop and get on the ground came in response to Dennis's refusal to comply with the initial command. Officer Foskey's tackling of Dennis simply effectuated Foskey's show of authority and was necessitated by Dennis's disobedience. Dennis's resistance to the tackle, therefore, which led to his conviction for battery, was to a lawful show of authority.

To characterize Officer Foskey's show of authority as a series of discrete and unconnected events, as did the Court of Appeals of Maryland, (Pet. for Cert. App. 19a), and as does Dennis, (Brief in Opp. 4-5), is tantamount to saying that the police have no authority to enforce lawful orders that are ignored or disobeyed. If such were the case, the police could only arrest individuals who fully cooperated with the arrest procedure and could only execute search warrants where the occupants willingly allowed entry.

Officer Foskey's tackling of Dennis was a reasonable means of enforcing his ignored verbal command to remain in the vehicle, not an illegal arrest. It follows that if the order to remain in the vehicle was lawful, the very foundation upon which the Court of Appeals of Maryland based its reversal of Dennis's battery conviction would disappear. Dennis concedes as much when he states: "If

Respondent had stopped rather than walked away, there would have been no basis for Foskey's attack *unless the Court were to hold that the passenger could not leave the vehicle, and if he does, the police may punish him by throwing him to the ground.*" (Brief in Opp. 4) (emphasis added).[1] Because Dennis's battery conviction will be impacted directly by this Court's decision, a case or controversy exists. *See generally United States Nat'l Bank of Or. v. Independent Ins. Agents of Am.*, 508 U.S. 439, 446 (1993) (case or controversy exists where there is "pursuance of an honest and actual antagonistic assertion of rights by one [party] against another" and where "valuable legal rights [would] be directly affected to a specific and substantial degree" by Court's decision) (internal quotation marks and citations omitted).

II.

THE ISSUE PRESENTED BY THIS CASE IS NOT THE EVIDENTIARY SUFFICIENCY OF DENNIS'S CONVICTIONS.

Dennis argues that the question whether evidence is legally sufficient to sustain a conviction ordinarily turns on an interpretation of state law principles and that, therefore, this case presents no issue "which justifies review by this Court." (Brief in Opp. 5). This contention is specious.

The Court of Appeals of Maryland framed the issue in

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[1] Dennis incorrectly labels as "punishment" that which is nothing more than a reasonable response to a failure to comply with a lawful police command.

the first sentence of its opinion as follows: "This case presents the issue of whether a passenger in a vehicle whose driver has been stopped by police for a traffic violation may be convicted of disorderly conduct and battery when, rather than heeding the police command to remain in the vehicle, he walks away from the scene, and subsequently resists police attempts at detention." (Pet. for Cert. App. 1a). The Court recognized that a determination of "whether the seizure was legal" turned on "the scope and application of *Terry*"[2] and that the "analysis in this area is guided by the contours of the Fourth Amendment." (*Id.* 9a). Thus, Dennis's assertion that this case presents purely a state law question of evidentiary sufficiency is erroneous.

A case virtually indistinguishable from the instant case in this regard is *Brown v. Texas*, 443 U.S. 47 (1979). In *Brown*, the defendant was convicted of violating a state statute making it a crime to refuse to provide one's name and address to a police officer. *Id.* at 49. The issue before this Court was whether the police officer's stopping the defendant and requiring him to identify himself violated the Fourth Amendment. *Id.* at 50. Although the validity of the defendant's conviction under state law was at issue, the Fourth Amendment was implicated by virtue of the seizure leading to his arrest. *Id. Accord Graham v. Connor*, 490 U.S. 386, 394 (1989) (where an excessive force claim arises in the context of an arrest or stop of a citizen, the Fourth Amendment guarantee against unreasonable seizures is implicated); *Brower v. County of Inyo*, 489 U.S. 593, 598-99 (1989) (same).

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[2] *Terry v. Ohio*, 392 U.S. 1 (1968).

In short, Dennis's protestations to the contrary notwithstanding, this case presents the federal question of whether the Fourth Amendment permits police who have lawfully stopped a vehicle for a traffic violation to order passengers to remain in the vehicle during the encounter. And, for the reasons stated in Maryland's petition, this question merits review by the Court.

CONCLUSION

For the foregoing reasons and for the reasons stated in its petition for writ of certiorari, Maryland respectfully requests that the petition be held pending this Court's disposition in *Maryland v. Wilson*, No. 95-1268, and that it be disposed of in light of the Court's decision in that case.

Respectfully submitted,

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